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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,714

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EXAMINER

GETTMAN, CHRISTINA DANIELLE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,714

Applicant(s)

SUYKER ET AL.

Examiner

Christina D. Gettman

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 15-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Dakov, U.S. 5,720,755.

Dakov discloses an applicator for use in a system including joining elements for making an anastomosis between hollow structures, said applicator comprising a head 202 provided with a plurality of arms 214, each said arm having a proximal end and a distal end, and wherein each said arm is movable from a first position (Fig. 12C) at which the distal ends of the arms are separated by a first distance which is less than a distance of separation between the proximal ends of said arms when said arms are in the first position, to a second position (Fig. 12F), at which the distal ends of said arms

are separated by a second distance, the second distance being greater than the first distance; and a shank-like element 228 associated with said head such that relative movement of said shank-like element and said head causes said arms to move from said first position toward said second position, and wherein the distal ends of the arms are adapted to hold and position said joining elements for making an anastomosis between the hollow structures. See figures 12C, 12E-F. The arms are capable of support a portion of the hollow structure. Since ref. 212 are openings allowing access to the interior of the detainer, the hollow structure could be pulled in through the opening and be supported by the arms. The arms also have open spaces that the tissue could be wrapped around. The arms are also adapted to do so while holding the joining elements. The joining elements would still be capable of piercing the tissue and forming an anastomosis between hollow structures.

A proximal portion of each said arm is attached to an attachment member 218.

Relative movement of the head and shank-like elements expand the arms radially outwardly, relative to an axis of the shank-like element. Cf. figures 12E, 12F.

The arms expand from the first to the second position with some degree of deformation.

The device further comprises a "part" 228a located proximate to a distal end of the shank-like element for causing movement of the arms from the first position toward the second position.

The part comprises a surface portion in engagement with each said arm such that relative movement between the shank-like element and the head results in movement of the arms from the first position toward the second position. See Fig. 12E.

The device further comprises a detainer (204 or 228a) for controlling movement of the joining elements.

The detainer 204 comprises a plurality of surface portions positioned to engage surface portions of said joining elements to thereby limit the movement of the joining elements relative to the detainer. See Fig. 12E.

The detainer 228a is axially movable relative to the arms.

Axial movement of the detainer results in positioning the joining elements for making an anastomosis by engagement between a surface of each joining element and a surface of each arm. Cf. figures 12D, 12F.

The surface portions of the arms which engage the joining elements are arranged such that the joining elements deform towards a joining position as the detainer is moved axially relative to the arms. Cf. figures 12D-12F. See col. 12, lines 26-30.

The surface portions of the detainer are arranged such that the joining elements can become disengaged from the detainer when the joining elements are in the joining position (at the end of the joining process).

The detainer 204 further comprises a plurality of surface portions positioned to limit the extent of movement of the arms. Fig. 12E.

The surface portions form part of the detainer 204 and part of the head 202.

Response to Arguments

Applicant's arguments with respect to claims 15-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Balazs, U.S. 5,669,918, disclosing an anastomosis device.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina D. Gettman whose telephone number is 571-272-3128. The examiner can normally be reached on Monday-Friday 7:15 am to 3:45 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CC

Christina Gettman
Art Unit 3734
571-272-3128


MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER